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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 RICHARD McKINNEY,

10 Plaintiff,

11 v.

12 STATE OF WASHINGTON
13 DEPARTMENT OF SOCIAL AND
14 HEALTH SERVICES, et al.,

15 Defendants.

16
17 CASE NO. C05-691JLR
18 ORDER

19 **I. INTRODUCTION**

20 This matter comes before the court on Defendants' cross-motion for summary
21 judgment (Dkt. # 42). The court has considered the papers filed in connection with this
22 motion, as well as Plaintiff's supplemental brief (Dkt. # 58).¹ For the reasons stated
23 below, the court GRANTS Defendants' motion.

24 **II. BACKGROUND**

25 On March 26, 2002, Defendant Washington State Department of Social and Health
26 Services ("DSHS") filed a Dependency Petition in state juvenile court concerning

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28 ¹The court incorporates the discussion from its prior orders (Dkt. ## 46, 57) leading to its
decision to allow Plaintiff an opportunity to submit a supplemental brief.

1 Plaintiff Richard McKinney's sons, R.M. and C.M. Pl.'s Resp., Ex. 5. Defendants based
 2 the Dependency Petition on their investigation into alleged abuse and neglect on the part
 3 of Mr. McKinney. *Id.* The following day, a King County Juvenile Court Commissioner
 4 held an initial shelter care hearing² and ordered temporary placement of both of Mr.
 5 McKinney's sons with their biological mother and joint custodian, Mary Cuniffe. Pl.'s
 6 Resp., Ex. 1. Defendants attest that Mr. McKinney did not object to the court's
 7 temporary placement of the children with their mother. Goodkin Decl. ¶ 3.

9 The juvenile court then attempted to hold a full shelter care hearing on at least two
 10 subsequent occasions; on each attempt, Mr. McKinney requested continuances in order to
 11 object to Defendants' evidence and to present his counter factual contentions. *Id.*; Pl.'s
 12 Resp., Ex. 1. Judge Catherine Shaffer finally held a hearing on May 24, 2002 and
 13 determined that the children should remain with Ms. Cuniffe. Pl.'s Resp., Ex. 3 at 6.
 14 The court also determined that it would consider Mr. McKinney's protestations at an
 15 upcoming fact-finding hearing, set for mid-August. *Id.* at 7. Apparently, Mr. McKinney
 16 again requested a continuance of court deadlines, and the court set a trial on the merits for
 17 mid-November. Ultimately, Mr. McKinney conceded sole custody of his children to his
 18 ex-wife, Ms. Cuniffe, pursuant to an agreed parenting plan order, filed in King County
 19 Superior Court in December of 2002. First Freimund Decl., Ex. 1. In turn, DSHS agreed
 20 to dismiss the dependency action. *Id.*, Ex. 3.

22 Nearly two years later, Mr. McKinney filed suit against DSHS and two of its
 23 employees, social workers Ken Kramer and Michael Saunderson. In his complaint, Mr.
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25 ²"Shelter care" means temporary physical care of a child. RCW § 13.34.030(13); see also
 26 RCW § 13.34.050, .62, .65 (outlining various procedures, including notice requirements, for a
 27 shelter care hearing). The shelter care placement is temporary, pending the court's determination
 28 of dependency after a fact-finding hearing. A "dependent child" is a child who has been
 abandoned, abused or neglected, or has no parent or guardian capable of adequately caring for
 him or her. *Id.* at § 13.34.030(5).

1 McKinney alleges, among other things, that Defendants “violated [his] Federal
 2 Constitutional rights, as they interfered with his relationship with his children without
 3 due process, deprived him of equal protection, and violated his fundamental civil rights in
 4 violation of the 5th and 14th Amendments to the Constitution of the United States.”
 5 Compl. ¶ 4.12. Mr. McKinney brings his federal constitutional claims pursuant to 42
 6 U.S.C. § 1983 (“section 1983”)³ solely as to circumstances involving his youngest son,
 7 C.M. Pl.’s Resp. at 7-8. Defendants move to dismiss McKinney’s constitutional claims
 8 on grounds of absolute or qualified immunity.

10 III. ANALYSIS

11 On a motion for summary judgment, the court is constrained to draw all inferences
 12 from the admissible evidence in the light most favorable to the non-moving party. Addisu
 13 v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is
 14 appropriate where there is no genuine issue of material fact and the moving party is
 15 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears
 16 the initial burden to demonstrate the absence of a genuine issue of material fact. Celotex
 17 Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden,
 18 the opposing party must show that there is a genuine issue of fact for trial. Matsushita
 19 Elect. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). The opposing
 20 party must present significant and probative evidence to support its claim or defense.
 21 Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

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 27 ³Section 1983 provides, in relevant part: “Every person who, under color of any statute,
 28 ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any
 citizen of the United States . . . the deprivation of any rights, privileges, or immunities secured by
 the Constitution and laws, shall be liable to the party injured . . .” 42 U.S.C. § 1983.

1 **A. Mr. McKinney's Claim against DSHS**

2 To succeed on a section 1983 claim, Mr. McKinney must establish that (1) the
 3 conduct complained of was committed by a person acting under color of state law, and
 4 (2) the conduct deprived him of a constitutional right. Parratt v. Taylor, 451 U.S. 527,
 5 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327, 330-1
 6 (1986); see also L.W. v. Grubbs, 974 F.2d 119, 120 (9th Cir. 1992). "Persons" liable for
 7 damages under section 1983 include state employees sued in their individual capacities.
 8 Hafer v. Melo, 502 U.S. 21, 25 (1992). States and their agencies and state employees
 9 sued in their official capacities are not proper defendants under section 1983 and
 10 therefore cannot be sued under the statute. Id. at 25-6 (citing Will v. Michigan State
 11 Police, 491 U.S. 58, 62-71 (1989)).

12 At the threshold, Defendants contend that DSHS, as an arm of the State of
 13 Washington, is not a proper defendant for purposes of a section 1983 action. Mr.
 14 McKinney does not refute this argument. Moreover, courts within this circuit have
 15 concluded that sovereign immunity shields DSHS from section 1983 liability. See, e.g.,
 16 Boone v. Washington Dept. of Social and Health Services, No. 06-604, 2005 WL
 17 1126936, *3 (W.D. Wash. May 9, 2005); Gutierrez v. Washington Dept. of Social and
 18 Health Services, No. 04-3004, 2005 WL 2346956, *4 (E.D. Wash. Sept. 26, 2005). As
 19 such, the court GRANTS summary judgment as to Mr. McKinney's section 1983 claims
 20 against DSHS. The court now turns to Mr. McKinney's claims against DSHS social
 21 workers Mr. Kramer and Mr. Saunderson, sued in their individual capacities (the
 22 "individual Defendants").⁴

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 27 ⁴Mr. McKinney does not cite any particular conduct of Mr. Saunderson. For purposes of
 28 this motion, the court assumes that Mr. Saunderson's conduct was commensurate with Mr.
 Kramer, although undoubtedly, Mr. Saunderson's involvement was far less.

1 **B. Mr. McKinney's Claim Against Mr. Kramer and Mr. Saunderson**

2 Social workers who perform quasi-prosecutorial duties such as instituting
3 dependency proceedings are entitled to absolute immunity from suit. Miller v. Gammie,
4 335 F.3d 889, 898 (9th Cir. 2003). Following Miller, the Ninth Circuit in Doe v. Lebbos
5 upheld a district court's grant of absolute immunity to a social worker for her "quasi-
6 prosecutorial" actions in "investigating and presenting evidence to the dependency court."
7 348 F.3d 820, 825 (9th Cir. 2003). In addition, a social worker enjoys absolute immunity
8 for her "quasi-judicial" actions, such as execution of a court order in the context of a
9 child welfare proceeding. Caldwell v. LeFaver, 928 F.2d 331, 333 (9th Cir. 1991).

10 Here, Mr. McKinney contends that the Defendants deprived him of his
11 fundamental right to the care and custody of his youngest child, C.M., without adequate
12 due process. In framing his constitutional violation, Mr. McKinney focuses heavily on
13 the inadequacy of the investigation surrounding accusations against him involving his
14 eldest son, R.M. As to how this bears on his relationship with C.M., Mr. McKinney's
15 apparent contention is that Defendants violated his constitutional rights when they
16 removed his youngest son without any particular allegations of abuse or neglect as to him.
17 Or, in Mr. McKinney's words, "Kramer not only deprived Plaintiff of his companionship
18 with C.M. without probable cause, without reasonable cause, but he did so at first without
19 legal authority." Pl.'s Resp. at 9.

20 The court concludes that absolute immunity shields Mr. Kramer and Mr.
21 Saunderson from suit. First, Defendants are immune from suit because they acted
22 pursuant to a court order when they effectuated temporary placement of C.M. with his
23 mother for the pendency of the proceeding. Pl.'s Resp., Ex. 1. Moreover, absolute
24 immunity shields the individual defendants insofar as their decision to name C.M. in
25 filing the dependency action that otherwise centered on neglect and alleged abuse as to

1 R.M. Miller, 335 F.3d at 898. That is, whether or not to file a dependency petition that
2 names both children when abuse and neglect allegations are raised only as to one, is the
3 type of conduct that this court concludes falls within the realm of prosecutorial discretion
4 that is historically protected from suit.

5 Even if the individual defendants are not entitled to absolute immunity, the court
6 concludes that qualified immunity applies. Government officials performing
7 discretionary functions enjoy qualified immunity from civil damages so long as their
8 conduct does not violate clearly established constitutional rights of which a reasonable
9 person would have known. Saucier v. Katz, 533 U.S. 194, 201-03 (2001). The court
10 must first determine if the evidence taken in the light most favorable to Mr. McKinney
11 shows that a constitutional violation occurred. Id. at 201. If, on Mr. McKinney's facts,
12 no constitutional violation occurred, the inquiry ends and the court must dismiss the
13 claims. Id. ("If no constitutional right would have been violated were the allegations
14 established, there is no necessity for further inquiries concerning qualified immunity.")
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16 Even taken in the light most favorable to Mr. McKinney, the court concludes that
17 there are insufficient facts of a constitutional violation as to the individual Defendants.
18 Most importantly, the court cannot conclude that the individual Defendants have *caused*
19 any deprivation of Mr. McKinney's rights. See Arnold v. Int'l Bus.Machines Corp., 637
20 F.2d 1350, 1355 (9th Cir. 1981) (holding that causation is element of section 1983 claim).
21 Indeed, the juvenile court never made a final dependency determination based on the
22 individual Defendants' investigation nor did the Defendants permanently remove C.M.
23 from the care and custody Mr. McKinney. Rather, Mr. McKinney eventually stipulated
24 that his ex-wife should have sole custody of the children as part of the couple's
25 dissolution proceeding. Celotex, 477 U.S. at 323 ("A complete failure of proof
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1 concerning an essential element of the nonmoving party's case necessarily renders all
2 other facts immaterial.”).

3 Regardless, Mr. McKinney appears to argue that the Defendants violated his
4 liberty interests and due process rights in recommending or carrying out even temporary
5 placement of C.M. with his mother during pendency of the dependency action. Mr.
6 McKinney’s contention hinges on his allegation of an inadequate investigation that led to
7 Defendants inclusion of C.M. in the dependency petition. Again, even on his facts, Mr.
8 McKinney fails to show a constitutional deprivation. First, unlike the multitude of cases
9 cited by Mr. McKinney involving seizure of children without probable or reasonable
10 cause, the temporary removal of C.M. from Mr. McKinney’s care occurred with the
11 backing of a court order – and ultimately, by his concession. Further, setting aside
12 whether the individual Defendants are even implicated in Mr. McKinney’s due process
13 claims, the evidentiary record belies Mr. McKinney’s allegations that the juvenile court
14 “flatly refused” him an adequate hearing. Rather, the evidence of multiple hearings (and
15 extensions at Mr. McKinney’s request) were more than sufficient to satisfy the demands
16 of due process at the shelter hearing stage of a dependency action. Indeed, the juvenile
17 court expressly preserved Mr. McKinney’s right to present his evidence at a later, fact-
18 finding hearing.⁵ Mr. McKinney does not allege that the individual Defendant prevented
19 him from putting on his own evidence at any stage of the dependency action nor that he
20 received inadequate notice. Without more, the court cannot conclude that the individual
21 Defendants have deprived Mr. McKinney of any constitutional right.

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26 ⁵The court finds Mr. McKinney’s citation to those cases concerning due process violations
27 at the *deprivation* stage of a child welfare action inapposite to the preliminary shelter care hearing
28 stage of the dependency action in this case. See In re Dependency of H.W., 854 P.2d 1100,
1102-03 (Wash. Ct. App. 1993) (distinguishing the due process requirements based on the stage
of the proceedings and noting that, for example, rules of evidence do not apply in shelter care
hearing).

Because the court concludes that there is insufficient evidence supporting a constitutional violation, the court need not reach the second prong of the qualified immunity test.

C. Supplemental Jurisdiction Over Remaining State Law Claims

Mr. McKinney originally filed this action in state court in September 2004. The sole basis for Defendants' removal in April 2005 was Mr. McKinney's addition of a federal claim under section 1983. With the court's ruling that dismisses this federal question, only state law claims remain. The court concludes that Mr. McKinney ought to be allowed to litigate his state law claims in the forum in which he first asserted them. As such, the court exercises its discretion to remand the remaining state law claims to King County Superior Court. See 28 U.S.C. § 1337(c)(3); Swett v. Schenk, 792 F.2d 1447, 1450 (9th Cir. 1986) ("[I]t is within the district court's discretion, once the basis for removal jurisdiction is dropped, whether to hear the rest of the action or remand it to the state court from which it was removed.").

IV. CONCLUSION

For the reasons stated above, the court GRANTS Defendants' cross-motion (Dkt. # 42), which dismisses Mr. McKinney's federal constitutional claims against all named Defendants. The court REMANDS the remaining state law claims to King County Superior Court.

Dated this 23rd day of August, 2006.


JAMES L. ROBART
United States District Judge